Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 732/2016*, **

Communication submitted by:	Z.A. et al. (represented by counsel, Johan Lagerfelt)
Alleged victims:	The complainants
State party:	Sweden
Date of complaint:	15 February 2016 (initial submission)
Date of the present decision:	11 May 2018
Subject matter:	Deportation of the complainants from Sweden to the Russian Federation
Procedural issue:	Non-substantiation of claims
Substantive issue:	Risk of torture and ill-treatment
Article of the Convention:	3

1.1 The complainants are Z.A., born in 1987, his wife, R.A., born in 1990, and their children, J.A., H.A. and H.A.A., born in 2010, 2012 and 2014 respectively, all citizens of the Russian Federation and of Chechen ethnicity. Their applications for asylum have been rejected by the State party. The complainants claim that their deportation to the Russian Federation would constitute a violation by Sweden of their rights under article 3 of the Convention. The complainants are represented by counsel.

1.2 On 14 March 2016, the Committee, acting through its Rapporteur on new complaints and interim measures, informed the complainants that it had denied their request for the provision of interim measures consisting of the issuance of a request to the State party to refrain from removing them to the Russian Federation pending the examination of their complaint.

The facts as presented by the complainants

2.1 The male complainant, Z.A., used to work as a police officer in the local police force in Chechnya, Russian Federation. Between 2007 and 2008, the "chief" of the village the complainants lived in claimed that some of the land in the possession of Z.A.'s family had been fraudulently purchased and should be returned. At the time of the purchase, the complainants did not face any problems in the village. However, after the village chief had

* Adopted by the Committee at its sixty-third session (23 April–18 May 2018).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé and Honghong Zhang.

attempted to gain possession of the land, "trouble started and began to escalate". In August 2013, the complainants were part of a group celebrating a wedding. Shortly after driving around the village, Z.A. was accused of driving dangerously and being drunk, and a formal complaint was submitted to the police. Z.A. was told that if he paid 300,000 roubles (approximately $5,000) the charges would be dropped, but that if he did not pay he would face one year and six months of imprisonment. When Z.A. refused to pay he was accused of collaborating with the rebels.

2.2 An attempt at mediation with the village chief was carried out in August 2013, but it ended in a shoot-out. Z.A. was slightly wounded while his cousin[1] was killed and another person was seriously injured. The village chief called for police reinforcements and Z.A. fled to Dagestan. He stayed in Dagestan for three months. During this period, his family in Chechnya was harassed and threatened in order to convince him to return. On an unspecified date, he travelled to Krasnodar, Russian Federation. While there, he was informed by friends that there was an outstanding arrest warrant against him for driving under the influence, for consorting with rebels and for murder. During Z.A.'s absence, his father and brother were "interrogated and brutalized" and his wife was told that she would lose custody of the children if she did not cooperate. Z.A. did not dare to contact the authorities as he was convinced that they were cooperating with the village chief. He was afraid that he would risk being killed in the blood feud. Three months later, the complainants travelled to Sweden, where they applied for asylum on 30 December 2013.

2.3 The complainants' application for asylum was rejected by the Migration Agency on 7 November 2014. They appealed that decision to the Migration Court; however, the appeal was rejected by the Court on 23 April 2015. The complainants' subsequent application for leave to appeal to the Migration Court of Appeal was rejected on 16 July 2015.

The complaint

3.1 The complainants claim that they would be at substantial risk of being subjected to torture or other cruel, inhuman or degrading treatment or punishment if returned to the Russian Federation. They claim that they are facing a clear threat because of their family's involvement in a blood feud in Chechnya and that the authorities would be unable or unwilling to protect them from such threats.

State party's observations on admissibility and the merits

4.1 On 12 September 2016, the State party submitted its observations on the admissibility and the merits of the complaint. The State party considers that the communication should be declared inadmissible under article 22 (2) of the Convention and rule 113 (b) of the Committee's rules of procedure for failure to substantiate the claims for purposes of admissibility. In the alternative, should the Committee find the communication to be admissible, the State party submits that the complaint is without merit.

4.2 The State party notes that as grounds for asylum in their application before the Migration Agency, the complainants claimed that Z.A. was at risk of being killed because of the conflict with the village chief and because the family was at risk as they had been accused of collaboration with rebels in Chechnya. In its decision of 7 November 2014, the Migration Agency found the complainants' statements pertaining to the conflict with the village chief to be credible. However, it found that, as the threat was attributable to non-State actors, it did not amount to persecution. It found that blood feuds occur in Chechnya but that an internal flight alternative was available to the complainants within the Russian Federation, and that Russian authorities were willing and able to offer protection to victims of crime. The Migration Agency found the complainants' claim that they risked persecution both from Chechen and Russian authorities to be unsubstantiated, as the claim that they had been accused of collaborating with rebels had not been plausibly demonstrated.

[1] It is noted in the decision of the Migration Agency of 7 November 2014 that in their statements during the asylum proceedings, the complainants stated that it was the village chief's cousin that was killed in the shooting, not Z.A.'s cousin.

4.3 The State party further notes that, in its decision of 23 April 2015, the Migration Court found that there were considerable shortcomings in the credibility of the complainants' asylum account. The Court noted that Z.A. had changed his account concerning the level of power that the chief of his home village allegedly held. In the procedure before the Migration Agency, he had stated that the chief did not have any substantial power or influence over the authorities and that his power was centred on his home village. However, in the procedure before the Court, he stated that the chief was related to an influential person in Chechnya, that he was the chief of several villages and that he had a large network of contacts. The Court found this to be an escalation of his claims for protection and also noted that the complainants had not submitted any written documentation concerning the alleged position or status of the village chief. Concerning the risk of being subjected to a blood feud, the Court found it unlikely that Z.A. would have been accused of killing anyone in the shooting in August 2013 as he had stated that he was not armed during the incident. It also noted that he had submitted contradictory information about the incident, stating in the procedure before the Migration Agency that the bodyguard of the village chief had died in the shooting, while stating in the oral hearing before the Court that the bodyguard was still alive. The Court further found the complainants' claim of having been accused of collaboration with rebels to be vague and lacking in details. It noted that, in the hearing before the Court, Z.A. had stated that the accusations were linked to a childhood friend, whom he had not seen for several years. The Court found that, as Z.A. had been employed as a police officer until he left Chechnya, it seemed unlikely that the authorities would suspect him of sympathizing with rebels on such vague grounds. The Court concluded that the complainants had not demonstrated that they were at risk of being subjected to persecution if returned to their country of origin.

4.4 The State party notes that it does not wish to underestimate the legitimate concerns that can be expressed regarding the human rights situation in the Russian Federation, including in the North Caucasus. It argues, however, that according to country information, the violence in the North Caucasus has substantially decreased in recent years[2] and that it cannot be concluded that the current human rights situation in the region in itself would be sufficient to conclude that the forced removal of the complainants would be in violation of the State party's obligations under article 3 of the Convention.

4.5 The State party notes that the male complainant has claimed that he would be at risk of being subjected to treatment contrary to the Convention due to a conflict with the chief of his home village that has developed into a blood feud. It notes that he has further claimed that he is wanted for murder, collaboration with rebels and driving under the influence in Chechnya. The State party argues that the Migration Agency and the Migration Court have conducted thorough examinations of the complainants' claims. It notes that the Migration Agency held interviews with the complainants during which they were represented by counsel and assisted by an interpreter. The minutes of the interviews were communicated to the complainants, who through their counsel submitted further comments in writing. The State party argues that the complainants have therefore had the opportunity to explain the relevant facts and circumstances in support of their claims. It further notes that an oral hearing was held before the Migration Court on 26 March 2015, during which the complainants were represented by counsel, and it argues that the Migration Agency and the Migration Court therefore had sufficient information to assess the complainants' need for protection in the State party.

4.6 The State party submits that the there is no information to indicate that the decisions of the Migration Agency and the Migration Court were inadequate, arbitrary or amounted to a denial of justice. Accordingly, considerable weight should be given to the findings of the domestic authorities.

[2] The State party refers to the International Crisis Group, "The North Caucasus insurgency and Syria: an exported jihad?" (Brussels, 16 March 2016); *Amnesty International Report 2015/2016: The State of the World's Human Rights* (London, Amnesty International, 2016); Human Rights Watch, *World Report 2016* (New York, 2016); Freedom House, "Freedom in the world 2016" (New York, 2016); and the Swedish Migration Agency, "Temarapport: Ryssland — folkbokföring, medborgarskap och indentitetshandlingar" (15 January 2016).

4.7 Regarding the alleged threat relating to the blood feud, the State party notes that this threat emanates from non-State actors. It refers to the Committee's jurisprudence in *G.R.B. v. Sweden*, in which the Committee has held that the obligation to refrain from expelling a person who might risk pain or suffering inflicted by non-governmental actors, without the acquiescence of a public official or a person acting in an official capacity, falls outside the scope of article 3 of the Convention.[3] It submits that in the present case it has not been substantiated that the perceived threat from non-State actors is inflicted by or at the instigation of, or with the consent or acquiescence of a public official or another person acting in official capacity.

4.8 The State party submits that there are significant doubts regarding the general credibility and veracity of the complainants' claims. It refers to the decision of the Migration Court and notes that there are inconsistencies in the complainants' account of events pertaining to the description of the influence and status of the chief of the complainants' home village and to what occurred at the alleged shooting in August 2013. The State party notes that the male complainant has also claimed that he would be at risk of ill-treatment by the Chechen authorities as he has been accused of collaborating with the rebel movement in Chechnya. It notes that the Migration Court found this claim to be vague and lacking in detail, as the complainant stated that the accusations were linked to a childhood friend that he had not seen for several years. The State refers to the decision of the Migration Court and it argues that since the complainant was working as a police officer until he left Chechnya, it would appear to be unlikely that the authorities would suspect him of sympathizing with rebels on such vague grounds.

4.9 The State party submits that the complainants have failed to provide substantial grounds for believing that they would be personally at a foreseeable and real risk of being subjected to torture upon return to the Russian Federation.

Complainants' comments on the State party's observations

5.1 On 13 March 2017, the complainants submitted their comments on the State party's observations. They make reference to a country report on the Russian Federation by the Swedish Foreign Office's Department for International Law, Human Rights and Treaty Law, according to which serious violations against human rights still occur in the North Caucasus, with unconfirmed reports of political murders and disappearances sanctioned by the authorities. They argue that contrary to the opinion of the Migration Agency, the Russian authorities would be unwilling to provide them with protection. They submit that there are therefore substantial grounds for believing that they would face a personal, real and foreseeable risk of being subjected to torture if returned to the Russian Federation.

State party's further observations

6.1 On 22 January 2018, the State party submitted further observations on the complaint. The State party refers to the 2017 Human Rights Watch country report on the Russian Federation, according to which armed confrontation between Islamist insurgents and law enforcement agencies have continued in the North Caucasus. According to the report, local authorities have been accused of abductions and enforced disappearances, ill-treatment and threats of violence against journalists, critics and others deemed disloyal to the authorities. The State party argues that, while the human rights situation in the Russian Federation and the North Caucasus remains troublesome, it is not such that there exists a general need for protection for all asylum seekers from the region. The State party maintains that a removal of the complainants to the Russian Federation would not amount to a violation of its obligations under article 3 of the Convention.

[3] *G.R.B v. Sweden* (CAT/C/20/D/83/1997), para. 6.5.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not contested that the complainants have exhausted all available domestic remedies. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

7.3 The Committee recalls that for a claim to be admissible under article 22 (2) of the Convention and rule 113 (b) of its rules of procedure, it must rise to the basic level of substantiation required for purposes of admissibility.[4] The Committee notes the State party's argument that the communication is manifestly unfounded owing to a lack of substantiation. The Committee notes the complainants' claim that they would be at risk of treatment contrary to article 3 of the Convention due to their involvement in an alleged blood feud in their home village from which domestic authorities would be unable or unwilling to protect them. The Committee recalls that the State party's obligation to refrain from forcibly returning a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture is directly linked to the definition of torture as found in article 1 of the Convention. For the purposes of the Convention, according to article 1, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. The Committee recalls its jurisprudence that the issue whether the State party has an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the Government, falls outside the scope of article 3 of the Convention.[5] In this regard the Committee notes that, in their statements before the Migration Agency, the complainants described the village chief, with whom they were involved in the feud, as lacking significant power and influence over domestic authorities as his influence was centred on their home village. The Committee therefore finds that the complainants have not sufficiently substantiated their claim that, upon their return to the Russian Federation, they would be at risk of suffering treatment contrary to article 3 of the Convention because of their involvement in a blood feud, with the consent or acquiescence of a public official or of other persons acting in an official capacity.

7.4 The Committee notes that the complainants have also claimed that they would be at risk of ill-treatment by the Chechen and Russian authorities as they have been accused of collaborating with the rebel movement in Chechnya. The Committee notes that, in their complaint, the complainants have not provided any further information or explanation as to why they would be suspected of collaborating with rebels and therefore finds that they have failed to substantiate this part of their complaint for purposes of admissibility.

7.5 The Committee notes that the complainants have also claimed that A.Z. would be at risk of being charged with murder and driving under the influence if returned to the Russian

[4] See, inter alia, *Z. v. Denmark* (CAT/C/55/D/555/2013), para. 6.3.

[5] See, inter alia, *M.P.S. v. Australia* (CAT/C/28/D/138/1999), para. 7.4 and *M.F. v. Sweden* (CAT/C/41/D/326/2007), para. 7.5.

Federation. The Committee notes, however, that the complainants have not provided any further substantiation as to this claim and therefore finds that they have failed to substantiate that A.Z. would be at risk of facing treatment contrary to article 3 of the Convention in connection to the alleged incident of August 2013.

7.6 On the basis of the above, and in the light of the material before it, the Committee considers that the complainants have failed to sufficiently substantiate for the purpose of admissibility that their forcible removal to the Russian Federation would expose them to a foreseeable, real and personal risk of torture within the meaning of article 3 of the Convention.

8. The Committee therefore decides:

(a) That the communication is inadmissible under article 22 (2) of the Convention;

(b) That the present decision shall be communicated to the complainants and to the State party.